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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2068

In Regard to the Matter of:

Bayside State Prison

Litigation

JEROME WILLIAM YOUNG,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

TUESDAY, MAY 6, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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1 APPEARANCES:

2

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18 ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: Rule 52(c) of the
2 Federal Rules of Civil Procedure provides, and I
3 quote, "If during a trial without a jury a party has
4 been fully heard on an issue and the court finds
5 against the party on that issue, the court may enter
6 judgment as a matter of law against that party with
7 respect to a claim or defense that cannotunder the
8 controlling law can be maintained or defeated without
9 a favorable finding on that issue, or may decline to
10 render any judgment until the close of the evidence.
11 Such judgment shall be supported by findings of fact
12 and conclusions of law as required by subdivision (a)
13 of this rule."

14 I find based upon the testimony of Mr.
15 Young himself that he was directed after stripping to
16 get underneath his bunk, obviously to be out of the
17 way in connection with the processing of his bunk
18 mate, who was on the top bunk. A scuffle ensued, at
19 least what he could hear. He looked out. He was
20 poked with the night stick in an area of his back and
21 ribs, and told to stop eyeballing. Apparently this
22 instruction had to be repeated once or twice more,
23 because he did try to look around again. The hitting
24 with the stick was, under the circumstances, neither
25 excessive in terms of the force applied nor

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1 inappropriate, given the fact that it represented an
2 appropriate corporal means of enforcing the
3 discipline necessary in those close quarters in order
4 to extract Mr. Young and his bunk mate from the cell.

5 Accordingly, upon being taken out from
6 underneath his bunk and stood up, the Court
7 determines that some measure of force could be
8 applied against him by the officer for the purpose of
9 reinforcing the need for discipline and compliance,
10 since Mr. Young, at least from underneath the bed,
11 had violated an order.

12 I realize that I have to measure and
13 assess from the testimony of Mr. Young himself the
14 nature of what occurred to him and the force applied.
15 I find that it wasn't just a question of having the
16 baton on the outside of the forearm placed against
17 his back and having him pushed against the wall. He
18 was struck in the back, and as a result thereafter,
19 pushed against the wall by this officer for the
20 purpose of reinforcing his authority and his need for
21 control.

22 Under all the circumstances involved,
23 including the events which led to this and the need
24 for the orderly evacuation of the unit for the
25 purposes of having them searched, I do not find that

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1 this was, indeed, excessive force under all the
2 circumstances. I do not find it necessary in this
3 decision to deal directly with the questions of
4 deminimis injury or deminimis force. What I do
5 determine is that under all the circumstances,
6 excessive force, as defined by the jury instructions
7 issued in prior cases which govern these matters, was
8 not employed.

9 With regard to the injuries involved, I
10 find no reason to contest Mr. Young that there has
11 been some residual back injury as a result of this
12 event. He has, however, made his own choices with
13 regard to not taking either prescription or
14 over-the-counter medication to rectify this
15 condition, or even if more was needed, to have it
16 X-rayed or otherwise treated. I don't call this any
17 intervening cause for his continuing discomforts, by
18 any means, but it also demonstrates, in my view, a
19 rather modest severity overall.

20 I have revised this decision under
21 Local Civil Rule 52.1. To reiterate, I make a
22 determination under all the facts and circumstances
23 before me here that the events which occurred to Mr.
24 Young in this matter are not actionable as cruel and
25 unusual punishment due to excessive force within the

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1 contemplation of the Eighth Amendment and the jury
2 instructions which are based thereon. I recommend
3 that the district court enter our order and judgment
4 of no cause for action with regard to Jerome Young.

5 I would be remiss, however, at this
6 point, and I would just like to take a moment to say
7 this, even though it's not critical to the decision I
8 have reached by any means, that Mr. Young, unlike,
9 regrettably, many others who have testified before me
10 in the last few months, has, it appears, put his
11 criminal conduct behind him. And under the guidance
12 of persons like the Browns, whose reputation hardly
13 needs to be elaborated upon by me here, has
14 apparently invoked his experiences to bring a
15 substantial amount of good in areas where it is
16 needed, namely the counseling of those with substance
17 abuse problems.

18 Mr. Young, for reasons I hope I've
19 articulated adequately, you did not prevail in this
20 case.

21 On the other hand, I commend you for
22 the course that your life has taken.

23 So this action -- I'll be recommending
24 to Judge Kugler that no cause of action be
25 established here.

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1 C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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Theresa O. Mastroianni

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Theresa O. Mastroianni, C.S.R.

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Notary Public, State of New Jersey

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My Commission Expires May 5, 2010

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Certificate No. XI0857

24

Date: May 6, 2008

25

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